



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)
)
) ISCR Case No. 14-00782
)
Applicant for Security Clearance)

Appearances

For Government: Caroline E. Heintzelman, Esq., Department Counsel
For Applicant: *Pro se*

08/04/2015

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Applicant's eligibility for a security clearance is denied.

Statement of the Case

On November 5, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines effective within the DOD for SORs issued after September 1, 2006.

Applicant answered the SOR on December 10, 2014, and elected to have his case decided on the written record. On April 24, 2015, Department Counsel submitted the Government's file of relevant material (FORM). The FORM was mailed and it was received on April 29, 2015. Applicant was afforded an opportunity to file objections and

submit material in refutation, extenuation, or mitigation. Applicant did not submit additional information. There were no objections and the Government's documents were admitted into the record. The case was assigned to me on July 22, 2015.

Findings of Fact

Applicant admitted the SOR allegations in ¶¶ 1.e, 1.g, 1.k, 1.l, 1.m, and 1.bb. He denied the remaining allegations. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 58 years old. He served in the military from 1977 to 2000. He retired with an honorable discharge. He married in 1981 and divorced in 1988. He remarried in 1993 and divorced in 2010. He has children, ages 33, 20, and 18. He has worked for the same federal contractor since 2000.¹

Applicant disclosed on his security clearance application (SCA), completed in January 2013, that he had delinquent debts, and he was working with companies to arrange monthly payments. He disclosed that credit card debts held jointly with his wife were divided as part of their divorce settlement. His wife was to make payments on certain credit cards and did not. He also disclosed that he was unable to make payments on his bills because he travels a lot for work. He disputed the delinquent medical bills because he indicated he had medical insurance.²

In August 2013, during Applicant's background interview with a government investigator, he indicated that as part of his divorce settlement he was required to pay \$3,000 monthly for alimony and \$3,400 monthly for child support. He was to relinquish the ownership of the shared home to his wife. Applicant indicated that he believed the disputed debts were either joint debts, which were the sole responsibility of his former wife or new accounts his former wife fraudulently opened in his name. He indicated that he intended to obtain legal representation to help him resolve the numerous accounts that he felt were his former wife's responsibly. He also indicated that he would attempt to settle any accounts that he is responsible for.³

In his answer to the SOR, Applicant admitted he owed the debts in ¶¶ 1.e (\$803), 1.g (\$1,249), 1.k (\$316), 1.l (\$651), 1.m (\$201), and 1.bb (\$9,878 for child support arrearages). Except for the child support arrearages, he stated that he would pay the debts in full within 90 days. Regarding the child support arrearages, he stated that he is "perpetually in arrears for child/spousal support because of loss of income." He stated that the "support levels were calculated with little room for adjustments in income and

¹ Item 2.

² Item 2.

³ Item 3.

fluctuates from month to month and work assignments.”⁴ The total amount of delinquent debt that Applicant acknowledged was his responsibility is \$13,093.⁵

Regarding the SOR debts related to tax liens in ¶¶ 1.a (\$127), 1.b (\$153) and 1.c (\$129), Applicant stated that he was never notified of any tax liens, and it was not reported on his credit report. He intended to initiate an inquiry, and if he is responsible he will make the payments within 90 days. He noted that his divorce was granted in June 2011, and all financial responsibilities regarding the house are his former wife’s.⁶

Regarding the remaining debts, Applicant stated in his answer to the SOR, that the debts were either assigned to his former wife as part of their final divorce settlement; fraudulently opened by his former wife after they filed for divorce and he intended to pursue legal action to clear his name; or he was never notified of the debt and it was not recorded on his credit report, but he will inquire about its legitimacy and pay it within 90 days if it is determined that he is liable for it. The total amount of delinquent debts that Applicant disputes is approximately \$226,100.⁷

Applicant did not provide proof that he has resolved any of the debts he admitted belonged to him. Applicant did not provide a copy of his divorce settlement detailing which debts were assigned to his former wife and which were assigned to him. He did not provide proof that he pursued legal action to clear his name. He did not provide a copy of his credit report to show which debts are no longer listed. The alleged delinquent debts were verified with credit reports from March 2015, March 2014, and January 2013.⁸ In addition, the tax liens were verified by judgments issued by the state.⁹

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant’s eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the

⁴ Item 1.

⁵ Item 1.

⁶ Item 1.

⁷ Item 1.

⁸ Items 4, 5, and 6.

⁹ Item 7.

factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable security decision."

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for financial considerations is set out in AG ¶ 18:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to

protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns. I have considered the following under AG ¶ 19:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has 29 delinquent debts totaling approximately \$239,200. Some have been delinquent since at least 2011. There is sufficient evidence to support the application of both of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant attributed his financial problems to his divorce that was final in 2011. He indicated many of the alleged delinquent debts were assigned to his former wife as part of their divorce settlement. He stated other delinquent debts were fraudulently opened by his former wife in his name after they filed for divorce, and he was going to pursue legal action. He stated that he was never notified other debts were delinquent,

and they were not on his credit report. Applicant did not provide documented proof to substantiate the basis of his disputes or provide evidence of his actions to resolve the issues. He did not provide any documents to show he paid any of the debts he admitted belonged to him. Applicant was aware as early as January 2013, when he completed his SCA, that his finances were a security concern. At that time, he indicated he would contact creditors and make arrangements to pay some of the debts. He did not provide evidence of his actions. Although his divorce was beyond his control, it has now been more than four years, and he failed to show he has acted responsibly under the circumstances. His debts are unresolved. His actions cast doubt on his current reliability, trustworthiness, and good judgment. There are not clear indications his financial problems are being resolved or are under control. There is no evidence he initiated good-faith efforts to resolve his debts. AG ¶ 20(b) partially applies. None of the other mitigating conditions apply.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress;
- and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is 58 years old. He retired from the military and has worked for a federal contractor since 2000. Applicant has 29 delinquent debts totaling more than \$239,200 that are unpaid and unresolved. Despite being aware of the security concerns related to his finances since 2013, he failed to show he has taken action to resolve his delinquent debts. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I

conclude Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a-1.cc:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge